

SIKKIM



GOVERNMENT

GAZETTE

EXTRAORDINARY PUBLISHED BY AUTHORITY

Gangtok

Friday 27th December 2024

No. 566

GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK

No.117/Home/2024

Dated: 27/12/2024

NOTIFICATION

In exercise of the powers conferred by section 398 of the Bharaitya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023), the State Government is hereby pleased to frame the Witness Protection Scheme, 2024 as under; namely:-

1. SHORT TITLE AND COMMENCEMENT:

- (1) This Scheme shall be called the Witness Protection Scheme, 2024.
- (2) It shall come into force at once.

Part I

2. DEFINITIONS: In this scheme, unless the context otherwise requires,-

- (a) "Concealment of identity of witness" means and includes any condition prohibiting publication or revealing in any manner, directly or indirectly of the name, address and other particulars which may lead to the identification of the witness during investigation trial and post-trial stage;
- (b) "Competent Authority" means a Standing Committee in each District chaired by District and Sessions Judge with Head of the Police in the District as Member and Head of Prosecution in the District as its Member Secretary;
- (c) "Family Member" includes parents/guardian, spouse, live-in partner, siblings, children, grandchildren of the witness;
- (d) "Form" means "Witness Protection Application Form" appended to this Scheme;
- (e) "In Camera Proceeding" means proceedings wherein the Competent Authority/Court allows only those persons who are necessarily to be present while hearing and deciding the witness protection application or deposing in the court;

- (f) "Live Link" means and include a live video link or other such arrangement whereby a witness, while not being physically present in the courtroom for disposition in the matter or interacting with the Competent Authority;
- (g) "Witness Protection Measures" mean measures spelt out in clause 7, Par-III, Part IV and Part V of the Scheme;
- (h) "Offence" means those offences which are punishable with death or life imprisonment or an imprisonment up to seven years and above and also offences punishable under section 75, 76, 77, 78 and 79 of Bharatiya Nyaya Sanhita, 2022 (Act No. 45 of 2023);
- (i) "Sanhita" means Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023);
- (j) "Threat Analysis Report" means a detailed report prepared and submitted by the Head of the Police in the District investigating the case with regard to the seriousness and credibility of the threat perception to the witness or his family members. It shall contain specific details about the nature of threats faced by the witness of his family to their life, reputation or property apart from analysing the extent, the person or persons making the threat, have the intent, motive and resources to implement the threats.

It shall also categorize the threat perception apart from suggesting the specific witness protection measures which deserves to be taken in the matter;
- (k) Witness means any person who possesses information or document about any offence;
- (l) "Witness Protection Application" means an application moved by the witness in the prescribed form before a Competent Authority through its Member Secretary for seeking Witness Protection Order. It can be moved by the witness, his family member, his duly engaged counsel or Investigating Officer/Station House Officer/Sub Divisional Police Officer/Jail Superintendent concerned;
- (m) "Witness Protection Fund" means the fund created for bearing the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority under this scheme;
- (n) "Witness Protection Order" means an order passed by the Competent Authority detailing the witness protection measures to be taken;
- (o) "Witness Protection Cell" means a dedicated Cell under the Police Agencies assigned with the duty to implement the witness protection order.

Part. II

1. CATEGORIES OF WITNESS AS PER THREAT PERCEPTION

Category 'A': where the threat extends to life of witness or his family members, during investigation/trial or thereafter.

Category 'B': where the threat extends to safety, reputation or property of the witness or his family members, during the investigation/trial or thereafter

Category 'C': where the threat is moderate and extends to harassment or intimidation of the witness or his family member's reputation or property during the investigation/trial or thereafter.

2. STATE WITNESS PROTECTION FUND

- (1) There shall be a Fund, namely, the Witness Protection Fund from which the expenses incurred during the implementation of Witness Protection Order passed by the Competent Authority and other related expenditure shall be met.
- (2) The Witness Protection Fund shall comprise the following:
 - (a) Budgetary allocation made in the Annual Budget by the State Government;
 - (b) Receipt of amount of costs imposed/ordered to be deposited by the courts/ tribunals in the Witness Protection Fund;
 - (c) Donations/contributions from Philanthropist/ Charitable Institutions/ Organizations and individuals permitted by the Government;
 - (d) Funds contributed under Corporate Social Responsibility.
- (3) The said Fund shall be operated by the Home Department.

3. FILLING OF APPLICATION BEFORE COMPETENT AUTHORITY

The application for seeking protection order under this scheme can be filed in the prescribed form before the Competent Authority of the concerned District where the offence is committed, through its Member Secretary along with supporting documents if any.

4. PROCEDURE FOR PROCESSING THE APPLICATION

- (1) As and when an application is received by the Member Secretary of the Competent Authority, in the prescribed form, he shall forthwith pass an order for a calling for the Threat Analysis Report from the Superintendent of Police or Station House Officer in charge of the concerned Police Station.
- (2) Depending upon the urgency in the matter owing to imminent threat the Competent Authority can pass orders for interim protection of the witness of his family members during the pendency of the application.

Provided that nothing shall preclude police from providing immediate protection in case of grave and imminent threat to the life of applicant and his family members.

- (3) The Threat Analysis Report shall be prepared expeditiously while maintaining full confidentiality and it shall reach the Competent Authority within five (5) working days of receipt of the order.
- (4) The Threat Analysis Report shall categorize the threat perception and also include suggestive protection measures for providing adequate protection to the witness or his family.
- (5) While processing the application for witness protection, the Competent Authority shall also interact preferably in person and if not possible through electronic means with witness and/or his family members/ employers or any other person deemed fit so as to ascertain the witness protection needs of the witness.

Part V

9. RELOCATION OF WITNESS

- (1) In appropriate cases, where there is a request from the witness for relocation and based on the Threat Analysis Report a decision can be taken for relocation of the witness by the Competent Authority.
- (2) The Competent Authority may pass an order for witness relocation to a safer place within the State keeping in view the safety, welfare and wellbeing of the witness. The expenses shall be met from the Witness Protection Fund.

Part VI

10. WITNESSES TO BE APPRISED OF THE SCHEME

The Investigating Agencies shall give wide publicity to this Scheme. The Investigating Officer and the Court shall inform witnesses about the existence of "Witness Protection Scheme" and its salient features.

11. CONFIDENTIALITY AND PRESERVATION OF RECORDS.

- (1) All stakeholders including the Police, the Prosecution Department Court Staff, Lawyers from both sides shall maintain full confidentiality and shall ensure that under no circumstances any record document or information in relation to the proceedings under this scheme shall be shared with any person in any manner except with the Trial Court/ Appellate Court and that too, on a written order.
- (2) All the records pertaining to proceedings under this scheme shall be preserved till such time the related trial or appeal thereof is pending before a Court of Law. After one year of disposal of the last Court proceedings, the hard copy of the records can be weeded out by the Competent Authority after preserving the scanned soft copies of the same.

12. RECOVERY OF EXPENSES:

In case the witness has lodged a false complaint, the Home Department of the concerned Government can initiate proceedings against the witness for recovery of the expenditure incurred from the Witness Protection Fund.

13. REVIEW

In case the witness or the police authorities are aggrieved by the decisions of the Competent Authority a review application may be filed within 15 (fifteen) days of passing of the orders by the Competent Authority.

(R. Telang, IAS)
Additional Chief Secretary,
Home Department,

WITNESS PROTECTION APPLICATION

Under

WITNESS PROTECTION SCHEME, 2024

Before

The Competent Authority

District.....

Application for:

1. Witness Protection
2. Witness Identity Protection
3. New Identity
4. Witness Relocation

1.	Particulars of the Witness (Fill in Capital) 1) Name 2) Age 3) Gender (Male/Female/Other) 4) Father's /Mother's Name 5) Residential Address 6) Name and other details of family members of the witness who are receiving or perceiving threats 7) Contact details (Mobile/e-mail)	
2.	Particulars of Criminal matter 1) FIR No 2) Under Section 3) Police Station 4) District 5) D.D No (in case FIR not yet registered) 6) Cr.Case No. (In case of private complaint)	
3.	Particulars of the Accused (if available/known) 1) Name 2) Address	

3) Phone No 4) Email Id	
4. Name & other particulars of the person giving/suspected of giving threats	
5. Nature of threat. Please give brief details of threat received in the matter with specific date, place, mode and words used	
6. Type of witness protection measures prayed by/for the witness	
7. Details of Interim/Urgent Witness Protection needs, if required.	

Applicant/witness can use extra sheets for giving additional information.

(Full Name with signature)

Date:.....

Place:.....

UNDERTAKING

1. I undertake that I shall fully cooperate with the Competent Authority and the Department of Home of the State and Witness Protection Cell.
2. I certify that the information provided by me in this application is true and correct to my best knowledge and belief
3. I understand that in case information given by me in this application is found to be false, competent authority under the scheme reserve the right to recover the expensed incurred on me from out of the Witness Protection Fund.

(Full name and signature)

Date:

Place:

